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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,585	08/06/2003	David Zaic	Z605-002-PAT	8565
7590 11/08/2004			EXAMINER	
Angenehm Law Firm, Ltd. P.O. Box 48755 Coon Rapids, MN 55448-0755			WELCH, GARY L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,585

Applicant(s)

ZAIC, DAVID

Examiner

Gary L. Welch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the illustrations appear to be hand drawn wherein the lines are not uniform in thickness. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the projection being coated with a non-slip material (claim 7) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 1, 2, 16 and 17 are objected to because of the following informalities: These claims require that the hoop to have an expanded position and a compressed position wherein the compressed position is approximately half the diameter than the expanded diameter and the cover sized to receive the hoop in the compressed position and not receive the hoop in the expanded position. However, the structural claims are absent any structure that provides for the hoop to have both an expanded position and a compressed position (i.e., how or by what means performs this function). Appropriate correction is required.

Claim Rejections - 35 USC § 103

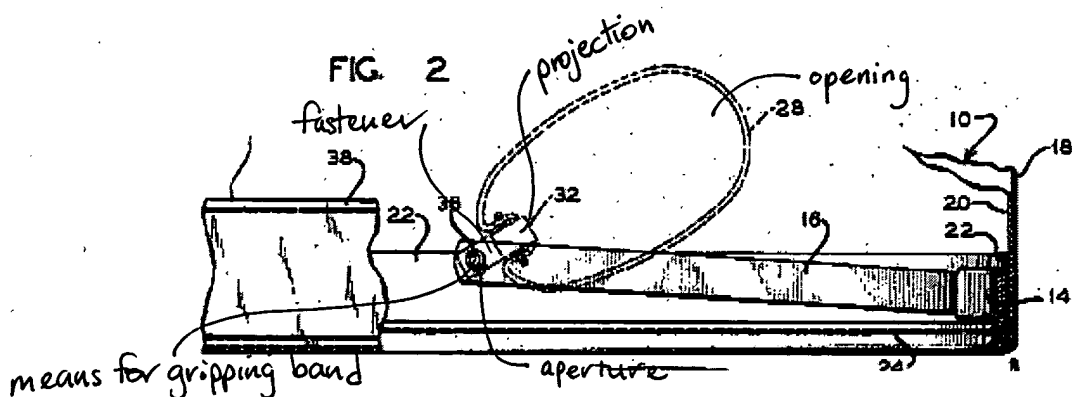
4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 8, 9, 10, 11, 12, 13 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mougel (U.S. 2,572,746) in view of Wassell (U.S. 4,935,965).

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Mougel discloses an ear muff having a support with a fastener integral with a hoop 28. The fastener includes means for gripping band 16 wherein the means for gripping includes a perimeter defining an aperture. A projection extends into the aperture and the hoop 28 has a rail defining an opening. The hoop 28 is capable of being positioned in an expanded position and a compressed position since it is made from wire. A cover 12 is provided and sized to receive the hoop (see Figure below).



However, Mougel does not disclose that the cover is comprised of both an outer cover and an insulator disposed.

Wassell teaches an ear muff wherein the cover is comprised of an outer layer and an inner insulator to protect the user from cold, wind, snow or the like without impairing the hearing (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cover 12 of Mougel with two layers (i.e., an outer layer and an insulator) as taught by Wassell in order to protect the user from cold, wind, snow or the like without impairing the hearing (see abstract).

With regard to claim 2, the invention is disclosed in the above rejection.

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With regard to claim 3, the fastener includes a perimeter defining an opening and a projection extending into the opening.

With regard to claim 4, the projection is sized to be on one side of a band of headgear while the perimeter is positioned on the opposite side of the band thereby trapping the band therebetween.

With regard to claim 5, the hoop extends downwardly from the band when in use and upwardly from the band when in non-use position.

With regard to claim 8, a second ear muff is provided.

With regard to claim 9, the first ear muff and the second ear muff are not joined to each other.

With regard to claim 10, the invention is disclosed above.

With regard to claim 11, the insulator is sized to fit within the hoop when the hoop is in the expanded position.

With regard to claim 12, the hoop is sufficiently larger than the human ear.

With regard to claim 13, the support is made of a material (i.e., wire) having sufficient stiffness and memory such that it does not deform during normal use and having sufficient flexibility and memory that it is repositionable relative to the user while in a use position via bending the support.

With regard to claims 15-20, the invention is disclosed in one or more of the above rejected claims.

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6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mougel (U.S. 2,572,746) in view of Wassell (U.S. 4,935,965) as applied to claim 3 above, and further in view of Schmitt et al. (U.S. 6,550,064).

Mougel and Wassell disclose the invention substantially as claimed above.

However, they do not disclose that the projection has teeth adapted to grip a band of headwear.

Schmitt et al. teaches a device for protecting a user's ear and removably attachable to a headgear via toothed gripping member. The toothed gripping member is functionally equivalent to the fastener of Mougel and therefore one of ordinary skill in the art would have found it obvious to replace the fastening arrangement of Mougel with the toothed projection taught by Schmitt et al.

With regard to claim 7, the invention is disclosed above.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mougel (U.S. 2,572,746) in view of Wassell (U.S. 4,935,965) as applied to claim 2 above, and further in view of Rosenberg et al. (U.S. 3,249,949).

Mougel and Wassell disclose the invention substantially as disclosed above.

However, they do not disclose that the cover is gathered at the opening with the elastic.

Rosenberg et al. teaches ear muffs that are gathered at the opening with elastic 42 for gathering around the frame so as to ensure that the ear muffs are securely held in place.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the ear muffs of Mougel with elastic at the opening so as to ensure that the ear muffs are securely held to the loop.

Conclusion

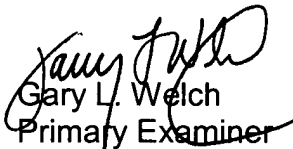
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Maxant '169, McDonough '954, Jacobs '996, Whidden '089, Dunford '911; Isom et al. '784, McCoy '270 disclose various ear coverings having a support with a fastener integral with a loop, means for gripping and a cover.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (703) 305-0451. The examiner can normally be reached on Mon-Fri 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary L. Welch
Primary Examiner
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glw